IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2007

CORAM

THE HONOURABLE .MR.JUSTICE S.MANIKUMAR

W.P.No.25767 of 2007 and
M.P.No.1 of 2007

M/s.Pioneer Agro Industry
No.54, Stanes road, 4th Street
Tirupur 641 602 ... Petitioner

vs.

The Commercial Tax Officer
Avinashi ... Respondent

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus to call for the records on the files of the respondent herein in CST No.670723/2004-05 dated 28.5.2007 an quash the same, while directing the respondents herein to accept the returns as provided under Section 12-C(1) of the Tamil nadu General Sales Tax (Fourth Amendment) Act, 2006 (Tamil Nadu Act No.37 of 2006) read with Section 9(2) of the Central Sales Tax, 1956.

For Petitioner : Mr.V.S.Manoj
For Respondent : Mr.R.Mahadevan, AGP

O R D E R

The petitioner-Industry is engaged in manufacture and sales of Coconut Shell Powder and registered as a Dealer under the provisions of the Tamil nadu General Sales Tax Act, 1959 and Central Sales Tax, 1956.

2. The petitioner has further submitted that the products of the petitioner, namely, Coconut Shell Powder was classified in Entry No.70 of Part B of Schedule 1 of the Tamil nadu General Sales Tax Act, 1959 from 1.4.1994 to 16.7.1996 and Coconut Shell Powder is nothing but a crushed form of coconut shell chips and the said Entry talks about Coconut shell and its chips. Subsequently, the Coconut shell and its chips were included under Entry No.75 of Part B of Schedule III with effect from 5.3.1997. With effect from 27.03.2003, the Coconut shell and its chips were brought under Entry No.45(ii) of Schedule III and they are taxable. In the clarifications issued by the Commissioner of Commercial Taxes, Coconut Shell and its chips were exempted and that they may not be assessed to tax. Later on, the Commissioner of Commercial Taxes in his further clarification No.118/2004 Acts Cell/63301/2003 dated 22.4.2004 clarified that Coconut Shell Powder is taxable at 12% under the residuary entry No. 40 of Part D of Schedule 1 to the TNGST Act, which was again reiterated by his orders dated 6.12.2004, 12.1.2005 and 29.9.2006. The petitioner has submitted the monthly returns for the Assessment Years 2004-2005 and 2005-2006. Tamil

nadu General Sales Tax Act, 1959 was amended by Tamil Nadu Act No.37 of 2006 by inserting 12-C to the Act and a rule 15(5)(E) was also inserted in the Tamil nadu General Sales Tax Rules, 1959 by G.O.Ms.No.172, CT&R (81) dated 23.12.2006.

3. While that be the position, on 28.5.2007 the respondent issued a pre-assessment notice, proposing to reject the returns and accounts as incorrect and incomplete and it was also proposed to fix the total and taxable turnover for the years 2004-2005 to the best of judgement as stated in the notice. As per the said notice, it was also proposed to levy a penalty for the short fall in payment between tax assessed and tax paid at the appropriate rate. The notice dated 28.5.2007 issued under the CST Act, 1959 for the assessment year 2004-2005 is impugned in this Writ Petition.

4. Learned counsel for the petitioner submitted that since the monthly returns have already been submitted within the prescribe date, the authority lacks jurisdiction for issuing the impugned Show Cause Notice and the returns submitted on or before 31.3.2005 have to be simply accepted without verification, as per Section 12-C of the amended Act.

5. Learned counsel for the petitioner further submitted that the petitioner has not attempted to conceal or suppress the tax liability and the petitioner has disclosed the entire turnover for the above assessment period.

6. Learned counsel for the petitioner further submitted that a show cause notice can be issued only in cases falling under 15(5)(E) of the Tamil nadu General Sales Tax Rules, 1959 and therefore, the impugned notice is liable to be set aside.

7. Considering the limited scope of the writ petition, Mr.R.Mahadevan, learned Additional Government Pleader was put on notice. He submitted that the writ petition is filed only against the Show Cause Notice and therefore, the petitioner can always submit their objections to the show cause notice. Learned Additional Government Pleader further submitted that insertion of the amended Section i.e. Sec.12-C does not take away the right of the Assessing officer to examine as to whether there has been any concealment or suppression of tax liability for the year 2004-2005.

Heard the counsel appearing for the parties and perused the materials available on record.

8. Before adverting to the facts of the case, it is relevant to extract the amended provision. Section 12-C of the Tamil nadu General Sales Tax Act, 1959 has been introduced on 20th December 2006, which reads as follow:

> "12-C Assessment of sales in certain cases:-
> 1) Notwithstanding anything contained in this Act subject to the provisions of Section 16, the assessment of a dealer in respect of the assessment for the period prior to the first day of April 2006, shall be on the basis of return relating to his turnover and on the basis of the declaration or certificate as may be prescribed, furnished on

or before 31st March 2007 and such return shall be accepted without requiring the presence of the dealer or production of books of account by the dealer subject to such conditions as may be prescribed."

9. In the instant case, the Assessing Officer has proposed to reject the returns and accounts, as they are incorrect and incomplete, based on the clarifications issued by the Commissioner of Commercial Taxes that Coconut Shell Powder is taxable at 12% under the residuary entry No.40 of Part D of Schedule I to the TNGST Act.

10. What is dispensed in the amended Section i.e. Section 12(C) is only the presence of the dealer or production of books of accounts and it does not take away the power of the Assessing officer to issue a notice for verification of the returns. The conditions to be satisfied by a dealer for the purpose of Section 12-C(1) of the Tamil Nadu General Sales Tax Act, 1959 are set out in Rule 15(5-E) of the Tamil Nadu General Sales Tax Rules, 1959, which reads as follows:

"(5-E) The conditions to be satisfied by a dealer for the purpose of Section (1) of Section 12-C are, namely:-

(1) The dealer should have submitted prescribed return for the year before 20th December, 2006.

(2) The dealer should submit the declaration referred to in sub-Section (1) of Section 12-C in Form XVII or other certificates already prescribed in the Act.

(3) During the relevant assessment year, the dealer should not have attempted to conceal or suppress tax liability of more than twenty-five thousand rupees.

(4) The dealer should not be in arrear of tax as per the monthly and annual returns filed for the assessment years concerned.

(5) The dealer should not also be in arrear of tax as per the monthly and annual returns filed for the assessment years concerned.

(6) The dealer's assessment does not relate to the first or last year of business.

(7) In case where the total turnover under the Act exceeds fifty lakhs of rupees, the dealer shall file his annual return only after it is duly audited and certified by a Chartered Accountant or a Cost Accountant."

11. In the case of incorrect or incomplete returns submitted by the dealer, it is always open to the Assessing Authority to call for production of supportive documents. Acceptance of returns would be permissible only if the returns are submitted along with necessary documents in respect of petitioner's claim relating to the total and taxable turnover. In a case where the dealer claims some exemption from payment of tax or rebate or reduction in rate of tax consequent to inter-state or intrastate sales, returns submitted by the dealer has to be necessarily verified as to whether, he is entitled for exemption, rebate or reduction in payment of rate of tax. If the assessing authority is of the opinion that the dealer is not entitled for any exemption, rebate, etc., he can always call upon such dealer to produce necessary documents or reject the claim. If there is any dispute as to

the rate of tax applicable to the goods, for which, the returns are submitted, based on any clarification issued or entries in the Taxation Act, under such circumstances, the dealer can be called upon to produce necessary documents and on that basis, appropriate action can be taken by the assessing officer in accordance with law. Therefore, the acceptance of returns is permissible only if it is in order. If all the returns submitted by the dealer are simply to be accepted on mere submission without verification, then it would lead to chaos, as there is every possibility of dealer submitting returns claiming exemption, rebate or reduction in rate of tax, as the case may be.

12. Since the Amended Section and Rules stated above do not take away the right of the Assessing Officer to examine the returns, the contention of the petitioner that the returns have to be accepted automatically cannot be countenanced.

13. As against the show cause notice, it is always open to the petitioner to submit, whatever points which are raised in this writ petition, in the form of their objections, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall pass appropriate orders, taking into consideration Section 12-C of the Tamil nadu General Sales Tax Act, 1959 read with Rule 15(5)(E) of the Tamil nadu General Sales Tax Rules, 1959.

14. With the above direction, the Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ajr

To
The Commercial Tax Officer, Avinashi.

1 cc To Mr.K.Vaitheeswaran, Advocate, SR.47827.
1 cc To The Special Government Pleader (Taxes), SR.17968.

W.P.No.25767 of 2007

TEJ(CO)
RVL 04.04.2008